

## REMARKS

This application has been carefully reviewed in light of the Office Action of June 19, 2006, wherein:

- A. Claims 1-4 and 20-22 were rejected under 35 USC 102(e) as being anticipated by US Patent No. 6,327,622 to Jindal et al..

### A. 35 USC 102(e)

In sections 3 and 4 of the Office Action, the Examiner rejected Claims 1-4 and 20-22 under 35 USC 102(e) as being anticipated by U.S. Patent No. 6,327,622 to Jindal et al., hereinafter the “Jindal patent.”

#### *Claims 1 and 20*

Regarding Claims 1 and 20, the Examiner stated that the Jindal patent teaches “a system for applying a persistence policy to override allocation of a resource based on application of a load balancing policy comprising: first logic for determining if a persistence policy is applicable to a service request and, if so, allocating a resource to the request based on application of the persistence policy (See col. 5, lines 35-40, *after the preferred server is identified ... subsequent request for the application or replicated service is directed to that server*); furthermore, Jindal et al. teaches a second logic for allocating a resource request based on application of a load balancing policy of the persistence policy is determined to be inapplicable as determined by the first logic (See col. 6, lines 35-56, *the server identified in look-up table may be determined according to the load-balancing policy* and col. 12, lines 13-24). “

As noted in section 706.02 of the MPEP, for anticipation under 35 USC 102, the reference must teach every aspect of the claimed invention. The Applicants submit that the Jindal patent does not teach, disclose or suggest each and every element of Claims 1 or 20.

Claim 1 claims, in part, “first logic in the network for determining if a persistence policy is applicable to a service request, ...” and “second logic in the network for allocating the resource based on a load balancing policy... if the persistence policy is determined to be inapplicable as determined by the first logic.” Thus, Claim 1 claims both a “persistence policy” and a “load balancing policy.” The Jindal patent does not teach, disclose, or suggest a “persistence policy.”

The Examiner cited col. 5, lines 35-40 of the Jindal patent to teach the first logic for determining if a persistence policy is applicable to a service request, and col. 6, lines 35-66 to teach a second logic for allocating a resource to the request based on application of a load balancing policy. The Applicants submit that the cited portions of Jindal patent does not teach a “a first logic ... for determining if persistence policy is applicable to a service request” and “a second logic ... for allocating the resource to the request ... if the persistence policy is determined to be inapplicable,” as is claimed in Claim 1.

The Jindal patent is directed toward “[a] method ... for providing load balancing requests for an application among a plurality of instances of the application operating on a plurality of servers. A policy is selected for choosing a preferred server from the plurality of servers according to a specified status or operational characteristic of the application instances.” See Abstract of Jindal. Further, the Jindal patent discloses that

information concerning instances of an application ... operating on multiple computer servers is collected and analyzed to identify a “preferred” server. Illustratively, a preferred server is the server to which client requests for the application are to be routed for processing. A preferred server is identified on a regular or periodic basis, and may be the same or different from the server previously identified. By periodically changing the preferred server, client requests are load-balanced between the participating servers.  
(Jindal, Col. 4, lines 57-67).

Additionally, the Jindal patent states that

when client 120 attempts to connect to application 104, the access request is received by central server100. Central server 100, through lookup table 102, identifies a preferred server offering an instance of program 104 and routes the client request accordingly. The server identified in lookup table 102 may be determined according to a load-balancing policy .... Further, the server identified in the lookup table 102 is updated or changed from time to time in accordance with the selected policy in order to distribute client requests among the instances of the application.  
(Jindal, Col. 6, lines 35-45).

The Applicants submit that the use of a lookup table in the Jindal patent is not the same thing as a persistence policy, which is claimed in Claim 1. As explained on page 21 of the present application, “[p]ersistence attempts to force the client request to the server that handled the last request from the same client.” The lookup table of the Jindal patent merely stores the preferred server determined by the load-balancing policy. Additionally, the lookup table of the Jindal

patent is changed depending upon the load-balancing policy on a periodic or regular basis. Therefore, the Applicants submit that the use of the lookup table in the Jindal patent is not a persistence policy as claimed in Claim 1.

Claim 20 claims, in part, “determining if a persistence policy is applicable to a service request, and, if so, allocating a resource to the request based on the persistence policy.” For the reasons stated above, the Applicants submit that the Jindal patent does not teach, disclose, or suggest “a persistence policy.” Since the Jindal patent does not disclose each and every element of Claim 20, the Applicants submit that the Jindal patent does not anticipate Claim 20.

### ***Claim 2***

Claim 2 is dependent upon Claim 1; therefore, Claim 2 is patentable at least due to its dependence upon an allowable base claim. Furthermore, Claim 2 is patentable over the Jindal patent.

Claim 2 claims, in part, “wherein the first logic determines if a persistence policy is applicable ... through consideration of whether or not an allocation exists or recently expired for the originator of the service request.”

As mentioned above, the Applicants submit that the Jindal patent does not teach, disclose, or suggest “a persistence policy.” Additionally, the Applicants submit that the Jindal patent does not teach, disclose, or suggest “wherein the first logic determines if a persistence policy is applicable ... through consideration of whether or not an allocation exists or recently expired for the originator of the service request,” as is claimed in Claim 2.

In rejecting Claim 2, the Examiner cited col. 11, lines 55-67 of the Jindal patent. Col. 11, lines 55-67 discusses “the existing load-balancing framework is examined to determine whether an IMO ... already exists for collecting data concerning an instance of the load-balanced application.”

Col. 8, line 23 defines an IMO as an individual monitor object. “IMOs 210, 212, and 214 collect information from the status objects 200, 202, and 204 respectively,” see col. 8, lines 27-29. “[C]onfiguration of the status objects (e.g., the data they collect) depends upon the policy that has been selected for choosing the preferred server,” see col. 7, lines 59-60. “[I]nformation gathered by the application-specific status objects is used by other objects and/or modules in the

load-balancing framework in order to determine a preferred server,” see col. 5, lines 62-65. Therefore, the IMO's discussed in col. 11, lines 55-67 are used in the load-balancing policy. Thus, the Applicants submit that the cited portions of the Jidal patent do not teach, disclose, or suggest “wherein the first logic determines if a persistence policy is applicable ... through consideration of whether or not an allocation exists or recently expired for the originator of the service request,” as is claimed in Claim 2 (emphasis added).

Therefore, the Applicants submit that Claim 2 is patentable over the Jidal patent.

### ***Claims 3 and 21***

Regarding Claims 3 and 21, the Examiner stated the Jidal patent teaches “a system for allocating a resource to a resource request having an originator based on application of a persistence policy comprising: first logic for determining whether an allocation exists or recently expired for the originator of the resource request, and, if so, identifying the resource which is the subject of the existing or recently expired allocation (See col. 9, lines 6-58); and a second logic for allocating the resource, once identified, to the resource request (See 6, lines 35-45).

As noted in section 706.02 of the MPEP, for anticipation under 34 USC 102, the reference must teach every aspect of the claimed invention. The Applicants submit that the Jidal patent does not teach, disclose or suggest each and every element of Claims 3 or 21.

As previously stated, the Jidal patent does not teach, disclose, or suggest a “persistence policy.” Further, the Jidal patent does not teach, disclose, or suggest “determining whether an allocation exists or recently expired for the originator of the resource request,” as is claimed in Claim 3 (emphasis added). As explained in col. 9, lines 6-58, the Jidal patent discloses that “when load balancing is performed ... a status object gathers load and/or operational information for an instance of the application being load balanced. ... [D]ata collected ... is analyzed in accordance with the selected policy and a preferred server is identified. ... [U]pdater object 230 updates lookup table 102 after the collected information is analyzed and a preferred server is selected.” The sections of the Jidal patent cited by the Examiner discuss how the preferred server is selected based on the characteristics for each instance of an application and how the client is routed to the preferred server via a lookup table. The Applicants find no mention in the portions of the Jidal patent cited by the Examiner of “determining whether an allocation exists or

recently expired for the originator of the resource request,” as is claimed in Claim 3 (emphasis added).

Therefore, the Applicants submit that the cited portions of the Jindal patent do not teach, disclose, or suggest “determining whether an allocation exists or recently expired for the originator of the resource request.”

Claim 21 claims, in part, “determining whether an allocation exists or recently expired for the originator of the resource request, and, if so, identify the resource which is the subject of the existing or recently expired allocation; and allocating the resource, once identified, to the resource request.”

As previously stated with respect to Claim 3, the Jindal patent does not teach, disclose, or suggest “determining whether an allocation exists or recently expired for the originator of the resource request.” Thus, Claim 21 is patentable over the Jindal patent for the same reasons given above for Claim 3.

#### ***Claims 4 and 22***

Claim 4 is dependent upon Claim 3 and Claim 22 is dependent upon Claim 21; therefore, Claims 4 and 22 are patentable at least due to their dependence upon an allowable base claim.

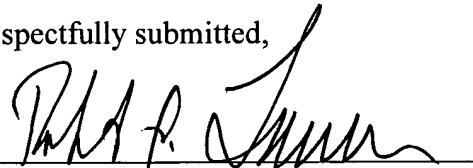
**Concluding Remarks:**

For all the foregoing reasons, reconsideration of and withdrawal of all outstanding rejections is respectfully requested. The Examiner is earnestly solicited to allow all claims, and pass this application to issuance.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 08-3038. In particular, if this response is not timely filed, the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of the number of months necessary to make this response timely filed. The petition fee due in connection therewith may be charged to deposit account no. **08-3038**, referencing Howrey Docket No. **02453.0003.CNUS01**.

To expedite allowance of this case, the Examiner is earnestly invited to call the undersigned at (949) 759-5269.

Respectfully submitted,

  
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Date: September 7, 2006

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